

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DOMINIC MALONE,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:23-cv-00217-APG-NJK

ORDER

Plaintiff Dominic Malone brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations. ECF No. 10. On May 3, 2023, I ordered Malone to file an amended complaint by June 7, 2023. ECF No. 9 at 7. I warned Malone that the action could be dismissed if he failed to file an amended complaint by that deadline. *Id.* That deadline expired, and Malone did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re*

1 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*,
2 833 F.2d at 130).

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the
4 Court’s interest in managing its docket, weigh in favor of dismissing Malone’s claims. The third
5 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
6 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
7 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
8 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
9 the factors favoring dismissal.

10 The fifth factor requires the Court to consider whether less drastic alternatives can be used
11 to correct the party’s failure that brought about the Court’s need to consider dismissal. *See Yourish*
12 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
13 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
14 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
15 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
16 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial granting
17 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
18 “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally
19 dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*,
20 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
21 unless Malone files an amended complaint, the only alternative is to enter a second order setting
22 another deadline. But the reality of repeating an ignored order is that it often only delays the
23 inevitable and squanders the Court’s finite resources. The circumstances here do not indicate that
24 this case will be an exception: there is no hint that Malone needs additional time or evidence that
25 he did not receive the Court’s screening order. Setting another deadline is not a meaningful
26 alternative given these circumstances. So the fifth factor favors dismissal.

1 **II. CONCLUSION**


2 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
3 dismissal. It is therefore ordered that this action is dismissed without prejudice based on Malone's
4 failure to file an amended complaint in compliance with this Court's order and for failure to state
5 a claim. The Clerk of Court is directed to enter judgment accordingly and close this case. No other
6 documents may be filed in this now-closed case. If Malone wishes to pursue his claims, he must
7 file a complaint in a new case.

8 I further order that Plaintiff's application to proceed *in forma pauperis* (ECF No. 8) is
9 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee.

10 I further order that, pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation
11 Reform Act, the Nevada Department of Corrections will forward payments from the account of
12 **DOMINIC MALONE, #69418** to the Clerk of the United States District Court, District of
13 Nevada, 20% of the preceding month's deposits (in months that the account exceeds \$10.00) until
14 the full \$350 filing fee has been paid for this action. The Clerk of the Court will send a copy of
15 this order to the Finance Division of the Clerk's Office. The Clerk will send a copy of this order
16 to the attention of **Chief of Inmate Services for the Nevada Department of Corrections** at
17 formapauperis@doc.nv.gov.

18 I further order that, even though this action is dismissed, or is otherwise unsuccessful, the
19 full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation
20 Reform Act.

21 DATED THIS 12th day of June 2023.

22 
23 _____
24 U.S. District Judge